

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF MASSACHUSETTS**

GERALD MALONE,
Petitioner,

v.

KATHLEEN M. DENNEHY,
Acting Commissioner of Massachusetts
Department of Corrections,
Respondent.

No. 1:04-CV-10283-RWZ

**PETITIONER'S MOTION TO ACCEPT MOTION FOR ISSUANCE OF A
CERTIFICATE OF APPEALABILITY PURSUANT TO 28 U.S.C. § 2253(c) AS
TIMELY FILED**

Now comes the Petitioner, by and through his counsel, requests this Honorable Court accept his motion for Issuance of a Certificate of Appealability as timely filed.

As grounds for his motion, the Petitioner states as follows:

1. That the Court denied Mr. Malone's petition on March 14, 2007.
2. Mr. Malone filed a notice of appeal with the First Circuit on April 12, 2007. The Court transmitted the record to the First Circuit Court of Appeals on April 18, 2007 and the appeal was docketed by the First Circuit on April 20, 2007.
3. Initially, the undersigned counsel was appointed by the Committee for Public Counsel Services to represent Mr. Malone in his direct appeal. After exhausting the state appellate process, the undersigned counsel sought permission to represent Mr. Malone in seeking a relief in the federal district court.
4. The undersigned counsel had intended to withdraw after the denial of the Petition and assist Mr. Malone in pursuing additional appellate remedies *pro se*.
5. After conferring with Mr. Malone and the Committee for Public Counsel Services private counsel division, the undersigned counsel agreed to continue to represent Mr. Malone in his appeal from the denial of his habeas corpus petition.

6. On June 19, 2007, the First Circuit directed Mr. Malone to file a request for a COA with the District Court and file a status report with the First Circuit
7. Petitioner's counsel has filed a Certificate of Appealability simultaneously with this motion.

Wherefore, the Petitioner respectfully request this Honorable Court accept his motion for issuance of certificate of appealability as timely filed.

Respectfully submitted
Petitioner's Attorney,

/s/ Derege B. Demissie
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Under the pains and penalties of perjury, I attest that the above factual allegations are true to the best of my knowledge, belief, and information.

/s/ Derege B. Demissie
DEREGE B. DEMISSIE

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on July 14, 2007.

/s/ Derege B. Demissie
DEREGE B. DEMISSIE